



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

CHARLES W. PENLAND, SR.,

Plaintiff,

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§

§

vs.

§ CIVIL ACTION NO. 6:07-3109-HFF-WMC

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CAROLINA FIRST BANK; UNITED
STATES OF AMERICA, and its appointed
trustee; and BONDING COMPANY,
Defendants.

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ORDER

This case was filed alleging that Defendants violated Plaintiff's procedural due process rights and South Carolina's "right to cure" law during the seizure of his motor home and the personal possessions contained therein. Plaintiff is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the Court construe Plaintiff's letter of October 15, 2007, as a motion to dismiss Defendants United States and Bonding Company and grant the motion. The Report further recommends that this case be dismissed without prejudice and without issuance and service of process and that this case be deemed a "strike" for purposes of the "three strikes" rule of 28 U.S.C. § 1915(g). The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court.

Mathews v. Weber, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on October 25, 2007, and the Clerk of Court entered Plaintiff's objections to the Report on November 9, 2007. The Court has reviewed Plaintiff's objections, but finds them to be without merit.

The Report recommends dismissing the case for lack of subject matter jurisdiction. Plaintiff fails to address this recommendation and instead reiterates facts and arguments stated in the Complaint in this case. These issues were correctly and adequately addressed in the Magistrate Judge's Report. Accordingly, the Court declines to address these issues a second time.

After a thorough review of the Report, the objections thereto, and the record in this case pursuant to the standard set forth above, the Court overrules Plaintiff's objections, adopts the Report and incorporates it herein. Therefore, the Court will construe Plaintiff's letter of October 15, 2007, as a motion to dismiss Defendants United States and Bonding Company and **GRANT** that motion. Further, it is the judgment of this Court that this case be **DISMISSED** without prejudice and without issuance and service of process. This case shall also be deemed a "strike" for purposes of the "three strikes" rule of 28 U.S.C. 1915(g).

IT IS SO ORDERED.

Signed this 15th day of April, 2008, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within 60 days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.